
SHADOW NORMS AS A THREAT TO NATIONAL AND INTERNATIONAL SECURITY: SOCIAL AND LEGAL ASPECTS OF COUNTERACTION

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Annotation. The paper proves, that during the natural development of social system, there are numerous of actual norms, but only some of them will become law. Others of them can: 1) to die out with the corresponding relations; 2) to disappear due to the emergence of new regulators of different nature; 3) to exist alongside the law, without intersecting with it or supplementing its norms; 4) to exist alongside the law and contradict it covertly or explicitly. And just the latter type of actual regulators is understood as shadow norms.

Shadow norms find their expression in: shadow economy, shadow politics, shadow justice. While "shadow law" is not an independent sphere, but mediates the above-mentioned.

Shadow norms have different degrees of danger, although in general all of them are negative phenomena in the legal system. Also they require different means of counteraction, both at the national and international levels (social and legal). The most severe reaction should be applied to such shadow norms as criminal subculture, shadow justice etc. But this is the most difficult task in the sphere of shadow politics, especially at the international level, in relation to strong players.

Keywords: shadow norms, shadow economy, shadow politics, shadow justice, threats to state security, national legal system, international relations, counteraction.

INTRODUCTION

There is no doubt that law is one of the social regulators of relations in society. But as a regulator, it occupies a special place due to its general obligation and support by the force of state coercion. In addition, the creation of only legal norms is mediated by a special, strictly regulated procedure, which is called law-making. However, in almost all spheres of social life, there are some rules of behavior that are inherently contrary to the law, although in fact they apply to a fairly wide range of social relations. Such rules of conduct in the legal doctrine are called shadow norms. Now the phenomenon of shadow rulemaking is insufficiently studied, its concept is not defined, as well as its signs and features. In science, there is no unified approach to understanding this socio-legal phenomenon, and there is no detailed description of it, which makes it difficult to distinguish the process of creating shadow norms from other types of norm-

making. In order to block, neutralize and overcome the negative effects of shadow law, it is necessary to determine what constitutes shadow rule-making, what characteristics are inherent in this process, and what causes can provoke the formation of shadow law norms.

It should be noted that the existence of a significant number of hidden regulators of behavior that contradict the letter or spirit of the law may be more or less dangerous for the state (depending on the nature and characteristics of these rules). However, this danger will always be present, if only because they undermine the authority of law and the state as institutions. Although shadow lawmaking is more or less inherent in any legal system, research on this issue is very limited due to the fact that this phenomenon is considered either in the context of the theory of offenses, or in the context of actual norms of behavior. These problematic issues clearly indicate the relevance of the topic of this scientific article.

The purpose of this research is to identify social and legal aspects of the fight against shadow norms as a threat to national and international security.

The objectives of the scientific article are: to formulate the definition of shadow norms as one of the social regulators; to outline aspects of the negative impact of shadow norms on the social and legal systems in the national and international context; to make proposals for improving social and legal ways to combat such a regulators.

METHODS OF RESEARCH

The basic methods of this scientific article, of course, can be called dialectical and systematic methods, since in the modern world it makes no sense to consider legal and social phenomena as such. Law itself is a social regulator, but, first, it is not the only one, and secondly, it is specific. In addition, the emergence and development of shadow norms should be considered as a social, not a legal process. This means that it is necessary to address society as a broader system in relation to the legal system.

The standard methods for research of this type will be deduction and induction, because the principles of ascent from the abstract to the concrete and vice versa will be essential for the qualification of certain phenomena in society as legal in nature (or not legal).

For the research results, legal modeling can help to mentally construct the process of the emergence and functioning of shadow norms at the national and international levels; to foresee the possible consequences of a significant number of them; to identify the best ways to counter this negative phenomenon.

Finally, the method of legal comparative studies should be applied to the specifics of countering shadow manifestations in various legal systems, which is very relevant for the globalized world.

PROBLEMS OF DEFINING SHADOW NORMS IN THE CONTEXT OF THE LAW FORMATION PROCESS

The legal literature is characterized by the presence of debatable approaches to understanding the phenomenon of law formation. The term "formation of law" is most often used in two aspects: 1) or in a historical context [9; 8]; 2) or as a synonym for law-making or the creation of other legal texts [4; 3; 2].

However, it can be defined as: "the process through which the transformation of social factors into legal norms is carried out" [19, p. 16]; a specific technology, the content of which is a set of public relations aimed at solving certain tasks (ensuring law-making, studying public relations, deciding on the development of a draft regulatory act, its consideration, approval, and so on) [15, p. 73]; the form of interaction of objective and subjective factors of social development, due to common class interests, in which the formation of the consciousness and will of the ruling class through the expression of competent state entities and the subsequent objectification of the law-making expression in the form of a normative legal act [13, p. 28-29]; the legitimate activities of individuals and their associations, which under the spout of certain objective needs spontaneously formed a legal relationship (the nature of which is consciousness), which further sanctioned by the state [14, p. 15]; epistemological act of awareness of social reality in order to correct it through the adoption of legal norms [11, p. 9].

It follows that it can be found understanding the formation of law as a broader concept in relation to law-making [1], is comprehensively supported within this work. Sustainable development of society in any country is a fundamental means of ensuring basic human needs, without which citizens' loyalty to the state, provided it is democratic, simply cannot be met.

However, in the social sphere, along with legal ones, there are many other regulators, among which business rules, corporate norms and a significant layer of other actual regulators of relations can be singled out. Actual regulators (norms) are most often understood as rules of behavior that are formed in society naturally and extend to a wide range of social relations, ordering them. Moreover, some of these rules are later perceived by the lawmaker and transferred to the plane of official law, that is, it acts before the law (forms its basis and acts as

the initial stage of law-making). A part of it acts in this way along with legal regulations, supplementing them in a certain way and filling in gaps in legal regulation.

In the process of law formation, first of all, according to N. Tswick, it is a question of relations between people that spontaneously develop due to daily repetition and acquire a normative character. On this basis, there is a need to recognize the general obligation and protect the most important and well-established public relations [18, p. 321]. In other words, the formation of law combines all forms and means of origin, development and change of law, including law-making. The process of law formation should be based on the basic social values with the formation of positive value attitudes focused on the universal, absolute and eternal [12, p. 42]. It follows from this that the formation of law is a unifying, generalizing category that combines the stage of the beginning of the formation of legal norms in society with their subsequent conclusion to the stage of law-making, and therefore state authorization.

There is no doubt that one of the necessary conditions for building a legal state is the creation of effective legal norms to regulate public relations, including relations between citizens and the state. Therefore, law-making is one of the most important aspects of the state's activity with the participation of civil society to establish, change, cancel and Supplement legal norms. Turning the principle of the rule of law into reality and ensuring the harmonious expression in legal norms of the objective needs of social development is the highest goal of rule-making [20, p. 15].

Therefore, in the process of creation can be nothing insignificant, every detail plays an important role. It is necessary to distinguish the category "formation of law" and "law-making" ("legislating"). The first of them refers to all the stages of the emergence of legal norms, considering their emergence in society. Meanwhile law-making represents the final stage of the formation of law, its official recognition and approval of state authorities. The formation of law is constantly and continuously simply because social life and social relations also are continuous [6, p. 353].

Thus, during the natural development of social relations, a large number of actual norms arise, only some of which will later become law. Others of them can: 1) to die out together with the corresponding relations; 2) to disappear due to the emergence of more effective regulators of different nature; 3) to exist alongside the right, without intersecting with it at all or supplementing its norms; 4) to exist alongside the right and contradict it covertly or explicitly. So, the latter type of actual behavior regulators is understood as shadow norms.

THE NATURE OF SHADOW NORMS AND ASSESSMENT OF THEIR DEGREE OF DANGER

As it was revealed in the previous section, in some cases, the actual rules (regulators) reflect the needs of society in legal regulation and more fully implement compliance with legal principles than the existing official rules, and can serve as an impetus for the legal consolidation of a better order of certain relations implementation. In this case, shadow law and actual law are identical concepts. But only in this, since the rules of shadow law are only one of the types of actual rules, which always characterizes illegal behavior carried out under clear, systematic rules. Actual norms that do not concern shadow law-making may represent the effect of certain informal rules of behavior and their transformation into law (at the stage of their public registration), or those norms that act alongside the law and do not contradict it, in a certain way complement the effect of legal regulations.

It is another matter when actual norms contradict official law, according to its letter or spirit. In this case, the prevalence of these regulators and their perception by a wide range of people plays an extremely negative role in the social system. In legal science, this phenomenon is called "shadow law" or "shadow lawmaking".

In particular, it should be noted that informal norms may not contradict "explicitly" the letter of the law, but it is necessary to contradict its spirit. That is, the commitment to shadow regulation in any case indicates a low level of legal awareness of a certain subject [5, p. 30].

Unofficial ("shadow") rulemaking can manifest itself in personal, sometimes selfish, regulations within an enterprise, locality, or administrative-territorial unit. In other cases, what constitutes an exceptional social danger is the creation of structures that are not provided for by law (for example, armed formations, bandit groups, nazi organizations, etc.). and in this aspect that it is necessary to consider the phenomenon of shadow law as an extremely negative, socially dangerous side of the development of unofficial rulemaking.

As for the consideration of shadow law-making as a legal phenomenon, the process of creating shadow norms can only be used indirectly. Public relations can not always be regulated by official law, so there is a so-called factual law that regulates actual relations in spite of or instead of official norms. Some legal scholars note that a variation of this type of rule is shadow law, as a negative manifestation of actual rules. However, the distinction between these concepts is a matter of approach to understanding the concept of "shadow law". Most lawyers who have studied the phenomenon of shadow law believe that this phenomenon is purely

negative, because such norms regulate existing relations in society contrary to legal principles. However, in some situations, they reflect the needs of society in legal regulation and more fully implement compliance with legal principles than existing official norms, and can serve as an impetus for the legal consolidation of a better order of certain relations implementation. In this case, shadow law and actual law are identical concepts. But only in this, since the norms of shadow law are only one of the types of actual norms, which always characterizes illegal behavior carried out under clear, systematic rules, and is also always associated with the legal consciousness of deformed species. Actual norms that do not concern shadow law-making can represent the effect of certain informal rules of behavior and their transformation into law (at the stage of their public registration) or those norms that act alongside the law and do not contradict it, in a certain way complement the effect of legal regulations.

V. M. Baranov reveals the complex negative foundation of the shadow side of legal reality. In his opinion, shadow law is a negative manifestation of legal pluralism, a specific form of wrong, a dangerous kind of negative unofficial law, which is a set of asocial mandatory rules that are in a state of struggle with official law, established by the participants of public relations themselves, prescriptions, symbols, rituals, gestures, jargon, through which all stages of illegal activity are regulated, a shadow legal order is formed, protected by special moral, mental, material and physical sanctions [10, p.15].

So, shadow lawmaking is a process of creating a special kind of social norms that regulate a specific sphere of social relations, which do not come from the state, are not protected by the force of state coercion, and are not characterized by formal certainty. As a legal phenomenon, shadow rule-making can be considered as a negative phenomenon, which, on the one hand, characterizes the low legal awareness of the population, and on the other, it appears due to the poor quality of the law-making process in the state, which requires additional analysis of the direct impact of the quality of legislation, including on the attitude to law [16, p. 108-112].

Shadow norms (shadow law) find their expression in various spheres of social life. But each sphere of expression of shadow norms is a special case of them and should not be identified with the basic, broadest category, which is obviously shadow norms (shadow law).

Thus, the most frequently mentioned manifestation of shadow law is the shadow economy. Under the shadow economy can be understood even single economic processes that are implemented outside the plane of law and contradict it. For registration in the shadow law, illegal manifestations must acquire a certain consistency and prevalence. For example, firms

that make illegal cash withdrawals operate according to clear standards and established schemes, and the strictness of the so-called "financial discipline" within such legal entities and their relations with clients sometimes does not yield (and sometimes exceeds) financial discipline in relations with official institutions.

Thus, shadow regulators of economic relations, due to their prevalence and stability, pose a threat to the economic development of the country and require significant efforts to reduce the scope of their application. But the situation is even more complicated when the state bodies themselves become "generators" of shadow law. For example, since the beginning of 2019, against the background of the fight against "black" imports, the customs authorities of Ukraine have started using tables of so-called "indicative" prices, that is, prices below which customs clearance of certain commodity items is not allowed, despite the price specified in the contract and product documents. In the case of failure to pay such rates, make use of validation, and there is a delay in delivery of goods and transport for an indefinite period [17]. Such actions further put the economy in the shadow, as they undermine confidence in the state as a regulator of economic relations, and polarize the interests of the state and business.

Based on the above, it can be concluded that shadow regulators of economic relations can sometimes serve as a guide that points to the shortcomings of legal regulation, the reasons for the inefficiency of official law. In this case, the reduction of the shadow law sector is possible due to the elimination of the root causes of its occurrence, without focusing on repressive measures of legal influence. And only after the root causes are eliminated, the application of legal liability can become an effective tool against offenders. But it should be emphasized that all these ways will be ineffective if the state itself, represented by its bodies, becomes the creator of shadow regulators, which pose the greatest threat to the country's economic development.

Another area where the shadow rules are actively functioning on a par with the official, it may be named policy. The sphere of shadow politics is more or less a part of any political system, including in the process of power struggle and political decision-making. But it becomes especially dangerous when it is implemented at the international level. It can be stated that, to a certain extent, at the international level, shadow politics is an integral part of agreements between governments and officials of States and international organizations. However, in another part, the emergence and rapid development of shadow norms in politics is a response to the crisis in the functioning of international institutions and sometimes the inability of them to make informed decisions based on their statutory rules. This becomes

especially dangerous for developing countries and(or) States that are in the zone of influence of other players in world politics.

At the same time, perhaps the most dangerous manifestation of shadow norms is "shadow justice", since access to justice and the right to a fair trial can be recognized as the basis for the stability of the entire social and legal system, as a matter of public confidence in the state, its officials and bodies. It is worth saying that the problem of shadow justice in developed, democratic social countries is mostly minimized, but it is extremely relevant for developing countries (including the post-Soviet legal family). While some national legal systems were able to leave such remnants in the past, for some of them it remains a legal reality (unfortunately, this includes the legal system of Ukraine).

Another threat in the sphere of shadow law-making is life in a globalized society, where informal behavior regulators can "flow" from one social system to another and even rise to a supranational level.

MEASURES AND WAYS TO REDUCE THE SPHERE OF SHADOW REGULATION OF PUBLIC RELATIONS

As follows from the above, shadow norms have different degrees of danger, although in general all of them can be characterized as a negative phenomenon in the legal system. But on truly dangerous can be recognize only "illegal", although even they in certain conditions can fulfill positive role (function) and to point to shortcomings of legislator [16, p. 30]. Therefore, they also require different means of counteraction, both at the national and international levels.

It is obvious that in relation to the least dangerous shadow rules can become useful to reduce the repressive capacity of the law and concentrate on its promotional functions. Focus on creating positive models of behavior, that is, the so-called prospective legal responsibility, in theory understanding as a legitimate, responsible behavior, will increase the prestige of law in society [7, p. 65]. At the same time, legal responsibility should be established only if the social level of the problem of the prerequisites for the emergence of shadow norms are resolved, but in the end it turned out to be ineffective.

Nevertheless, the most severe reaction should be applied to dangerous manifestations of shadow norms (which can be called criminal subculture, shadow justice, etc.). It should be recognized that this is most difficult in the sphere of shadow politics, especially at the international level, in relation to strong players, as is now observed in the international arena.

CONCLUSIONS

The conducted scientific research allows us to conclude that during the natural development of social relations, a large number of actual norms arise, only some of which will later become law. Others of them can: 1) to die out together with the corresponding relations; 2) to disappear due to the emergence of more effective regulators of different nature; 3) to exist alongside the right, without intersecting with it at all or supplementing its norms; 4) to exist alongside the right and contradict it covertly or explicitly.

And just the latter type of actual behavior regulators is understood as shadow norms.

Shadow norms (shadow law) find their expression in various spheres of social life. But each sphere of expression of shadow norms is a special case of them and should not be identified with the basic, broadest category, which is obviously shadow norms (shadow law). The most characteristic manifestations of shadow norms are the shadow economy (including the financial sector), shadow politics, and shadow justice. While "shadow law" is not an independent sphere, but mediates the above-mentioned and other spheres of regulation of social life.

Shadow norms have different degrees of danger, although in general all of them can be characterized as a negative phenomenon in the legal system. Therefore, they also require different means of counteraction, both at the national and international levels. But the legal responsibility should be established only if the social level of the problem of the prerequisites for the emergence of shadow norms are resolved, but in the end it turned out to be ineffective.

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